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WM. R. STANSBURY

IN THE

Supreme Court of the United States

OCTOBER TERM, 1925.

ILLINOIS BELL TELEPHONE COMPANY,
a corporation,

Appellee,

vs.

**FRANK L. SMITH, CICERO J. LINDLY HAL
W. TROVILLION, WILLIAM J. SMITH, P. H.
MOYNIHAN, EDWARD H. WRIGHT, and
WILLIAM BURKHARDT, the persons consti-
tuting the Illinois Commerce Commission of
the State of Illinois, and OSCAR E. CARL-
STROM, Attorney General of the State of
Illinois,**

Appellants.

No. 193.

ILLINOIS BELL TELEPHONE COMPANY,
a corporation,

Appellee,

vs.

**FRANK L. SMITH, CICERO J. LINDLY, HAL
W. TROVILLION, WILLIAM J. SMITH, P. H.
MOYNIHAN, EDWARD H. WRIGHT, and
WILLIAM BURKHARDT, the persons consti-
tuting the Illinois Commerce Commission of the
State of Illinois, and OSCAR E. CARL-
STROM, Attorney General of the State of
Illinois,**

Appellants.

No. 670.

**MOTION TO DISMISS NO. 193
OR ADVANCE NO. 670**

✓ **WILLIAM D. BANGS,**
Counsel for Appellee.



IN THE

Supreme Court of the United States,

OCTOBER TERM, A. D. 1925.

ILLINOIS BELL TELEPHONE COMPANY, a corporation,	} Appellee,	No. 193.
vs.		
FRANK L. SMITH, et al., Appellants.		

ILLINOIS BELL TELEPHONE COMPANY, a corporation,	} Appellee,	No. 670.
vs.		
FRANK L. SMITH, et al., Appellants.		

NOTICE.

To Oscar E. Carlstrom,
Attorney-General of the State of Illinois.
Shelton F. McGrath,
R. H. Radley,
Harry C. Heyl,
Counsel for Appellants.

Please take notice that on Monday, the 7th day of December, A. D. 1925, at 12:00 noon, or as soon thereafter as counsel may be heard, Illinois Bell Telephone Company, a corporation, appellee in both of the above

entitled causes, will submit to the Supreme Court of the United States, a motion, a copy of which is attached hereto, petitioning said court to dismiss the appeal in the above entitled cause No. 193, or, in the alternative, to advance the above entitled cause No. 670 to be heard with No. 193.

Dated November 18., 1925.

ILLINOIS BELL TELEPHONE COMPANY.

By WILLIAM D. BANGS,

Its Counsel.

Received a copy of the foregoing notice this ..19th..
day of November, 1925.

(Sealed) Oscar E. Carlstrom
Att. Gen.

Harry C. Key

Richard L. Padon

Hilton T. Smith

Counsel for Appellants.

IN THE

Supreme Court of the United States,

OCTOBER TERM, A. D. 1925.

ILLINOIS BELL TELEPHONE COMPANY, a corporation,	Appellee,	}	No. 193.
vs.			
FRANK L. SMITH, et al.,	Appellants.	}	
ILLINOIS BELL TELEPHONE COMPANY, a corporation,	Appellee,	}	No. 670.
vs.			
FRANK L. SMITH, et al.,	Appellants.	}	

MOTION TO DISMISS No. 193, OR IN THE ALTERNATIVE, ADVANCE No. 670.

Illinois Bell Telephone Company, a corporation, appellee in both of the above entitled causes, moves that the appeal in the above entitled cause No. 193 be dismissed, or, in the alternative, that the above entitled cause No. 670 be advanced to be heard with No. 193, and in support of said motion respectfully shows to the court:

The pending cases are two appeals taken in the same suit in equity brought by appellee to prevent the enforcement by the appellants of telephone rates in and

for its Peoria, Illinois, telephone exchange, which were alleged to be confiscatory and therefore void.

No. 193 is an appeal from an interlocutory injunction issued in said cause by the District Court of the United States for the Southern District of Illinois, and No. 670 is an appeal from a permanent injunction issued in said cause by said court.

At the hearing of appellee's motion for an interlocutory injunction, heard before three judges pursuant to Sec. 266 of the Judicial Code, based upon the bill and affidavits, an interlocutory injunction was granted, and the appellants appealed to this court (No. 193). The appellants did not answer but filed a motion to dismiss. Upon the denial of the motion to dismiss, appellants stood by their motion. No evidence was taken, and final decree was entered, as prayed for in the bill of complaint, from which final decree appellants appealed to this court (No. 670).

We submit that the same questions are involved in both appeals.

ILLINOIS BELL TELEPHONE COMPANY.

By WILLIAM D. BANGS,

Its Counsel.

BRIEF IN SUPPORT OF MOTIONS.

In support of its motion to dismiss the appeal in cause No. 193, appellee calls the attention of the court to the fact that No. 193, being an appeal from the interlocutory injunction in said cause, is merged in the appeal from the final order in said cause (No. 670), and should be dismissed. *Shaffner v. Carter*, 252 U. S. 37; *Pacific Telephone & Telegraph Co. v. Kuykendall*, 265 U. S. 196. In the cases cited the decrees temporary and permanent denied the injunction. In the present cases, the decrees granted the temporary and permanent injunctions. The cases cannot be distinguished on this basis, however, for the condition of the issuance of the temporary injunction is based upon the entry of a final decree, or the dissolution of the interlocutory decree.

In case the motion to dismiss should be denied, appellee has moved to advance case No. 670 to be heard by the court with case No. 193. As both appeals involve the same question, this motion is brought within paragraph 8 of Rule 18 of this court.

ILLINOIS BELL TELEPHONE COMPANY.

By WILLIAM D. BANGS,

Its Counsel.